IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 339 of 2007
With
CIVIL APPLICATION No. 1387 of 2007
With
CROSS OBJECTION No. 4 of 2007
In
FIRST APPEAL No. 339 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
BHARTI KANAIYALAL CHAUHAN & 5 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2.
MS SHAILI A KAPADIA for Defendant(s) : 1 - 4.
RULE UNSERVED for Defendant(s) : 3,5 - 6.
RULE NOT RECD BACK for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/03/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 challenges the judgment and award dated 19.5.2006 passed by Ms RM Vyas, Motor Accident Claims Tribunal (Aux.) and Fast-track Court No.11 in Baroda in MAC Petition No.350 of 1996 awarding compensation of Rs.25,21,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of claim petition filed in 1996 and the date of deposit.

2.0 Orders on Stay Application and Reasons for Early Final Hearing

2.1 The appeal was admitted on 24.1.2007 after condoning delay of 111 days. At that time, we had heard Mr RH Mehta, learned advocate for the appellant-Insurance Company and Mr Arpit Kapadia with Ms Shaili Kapadia, learned advocate for the original claimants and in view of the strong prima-facie case made out for the appellant-Insurance Company, we granted ad-interim stay of execution of the award, subject to the condition that the Insurance Company shall deposit only 50% of the award amount with proportionate costs and interest. We further directed that 90% of such amount to be deposited by the Insurance Company shall be invested in fixed deposits with a nationalized bank with permission to the claimants to withdraw interest periodically

accruing on such fixed deposits.

2.2 When the stay application came up for confirmation of ad-interim stay on 27.2.2007, it was brought to our notice that the Insurance Company had already deposited the entire award amount with proportionate costs and interest aggregating to Rs.42,66,022/- with the Tribunal on 14.12.2006 with the following specific endorsement made by the learned advocate for the Insurance Company appearing before the Tribunal :-

> “Hon'ble Sir, this amount has been depositd under protest by the United India Insurance Co. Ltd.. It has been decided by the United India Insurance Co. Ltd. to challenge the award before the Hon'ble High Court of Gujarat, therefore, it is prayed not to disburse the deposited awarded amount to the applicants.
> P.D. Desai
> 19.12.2006.”

It was also brought to our notice that on the ground that the Tribunal had not received any writ of stay, the Tribunal passed order on 3.1.2007 for disbursement of 30% of the amount and investment of 70% of the amount and that consequently on 8.1.2007, the claimants were handed over account payee cheques for a total sum of almost Rs.13 lakhs.

2.3 In view of the above developments, which were not brought to our notice while admitting the appeal and granting such ad-interim stay, by our

order dated 1.3.2007, we fixed the appeal for immediate final hearing and also called for the record and proceedings from the Tribunal.

Since the claimants had also filed cross-objections for enhancement of the compensation amount being Cross Objections No.4 of 2007 claiming additional compensation of Rs.4 lakhs and also for interest at a higher rate of 9% per annum, both the appeal and the cross objections were heard on 2.3.2007 after permitting the learned advocates for both the parties to go through the record and proceedings of the original claim petition. The respondents were also permitted to submit the written submissions. The learned counsel for the Insurance Company re-submitted the written submissions dated 2.5.2006 which were already submitted before the Tribunal at the hearing of the claim petition.

FACTS

3. The facts giving rise to this appeal, broadly stated, are as under :-

3.1 On 22.11.1995, one Kanaiyalal Chauhan and his co-passenger Vallabhbhai were travelling in Ambassador car (GJ.16T.289) from Ankleshwar to Surat i.e. from north to south. When the car reached village Amboli, the luxury bus insured by the appellant-Insurance Company (GJ.17T.2124) came from the opposite direction and after overtaking a truck

(GQG.7389) went over the wrong side and collided with the ambassador car. On account of the severe impact, Kanaiyalal driving the ambassador car died immediately on the spot and his co-passenger Vallabhbhai Jivabhai sustained injuries. While the injured claimant filed claim petition No.755 of 1996, the widow, two minor children and mother of deceased Kanaiyalal filed claim petition No.350 of 1996 for compensation of Rs.40 lakhs.

3.2 On the question of negligence, while the documentary evidence produced by the claimants was a copy of the First Information Report and the panchnama of the scene of the accident, the injured claimant (MACP No.755 of 1996) who was travelling as a co-passenger in the ambassador car gave his oral evidence. On behalf of the opponents i.e. the driver, owner and insurer of the luxury bus, no witness was examined. Even the luxury bus driver did not step in the witness box. The Tribunal held that the accident was caused by the sole negligence of the driver of the luxury bus insured by the appellant-Insurance Company.

3.3 On the question of quantum of compensation, the claimants' case was that the deceased owned two vehicles one ambassador car which the deceased was driving at the time of the accident and one jeep. Both the vehicles were given by the deceased for being plied on hire basis and the deceased was getting monthly income of Rs.12,000/- from this

business. It was also the claimants' case that the deceased was doing construction business, earning Rs.10,000/- per month and was also running a flour mill at Hansot and was earning Rs.3,000/- to Rs.4,000/- per month from that business. According to the claimants, therefore, the monthly income of the deceased was Rs.25,000/- The claimants did not produce any income-tax returns because it was not their case that the deceased was filing income-tax returns. The claimants did produce documentary evidence to show that the deceased had taken loans from a Bank for paying monthly installments towards purchase of the two vehicles. The Tribunal proceeded on the basis that since the deceased was paying monthly installment of Rs.3,200/- for the jeep and another monthly installment of Rs.6,000/- for the ambassador car, as evidenced by the bank receipts at Exhs. 22 to 24, the deceased must be earning at least Rs.10,000/- per month from the business of plying the jeep and taxi on hire. Relying on the bills for purchase of cement, bricks and sand, the Tribunal further held that the deceased must be carrying on the construction business in a casual manner and, therefore, must be earning Rs.1,500/- per month. The bills which were produced for showing ownership of the flour mill were in the name of grand-father of the deceased and the Tribunal believed that the deceased must be earning Rs.1,500/- from the flour mill also. The Tribunal accordingly assessed the monthly income of the deceased at Rs.13,000/-. Since the deceased was 34 years old, the Tribunal further

proceeded to assess the prospective future income of the deceased at Rs.19,500/- per month as per the usual formula. Deducting one-third therefrom as the personal expenses of the deceased, the Tribunal assessed the dependency benefit to the heirs at Rs.13,000/- per month i.e. Rs.1,56,000/- per annum. On the ground that the deceased was 34 years old, the Tribunal adopted the multiplier of 16 and accordingly computed the compensation for loss of dependency benefit at Rs.1,56,000 X 16 = 24,96,000/-. Further adding Rs.10,000/- for loss to the estate for loss of expectation of life and Rs.10,000/- for loss of consortium and Rs.5,000/- for funeral expenses, the Tribunal made an award for total compensation of Rs.25,21,000/- and also awarded proportionate costs and interest at the rate of 7.5% per annum.

4. The Insurance Company for the luxury bus is in appeal before us and Mr RH Mehta, learned counsel for the Insurance Company has challenged the judgment and award of the Tribunal both on the question of negligence and the quantum of compensation.

NEGLIGENCE

5.1 On the question of negligence, we have heard the learned counsel for the parties and we have also gone through the documentary and oral evidence on record.

5.2 On behalf of the appellant-Insurance

Company, it was contended that the Tribunal erred in holding that the driver of the luxury bus was solely responsible for causing the accident. It was contended that the Tribunal ought to have attributed contributory negligence on the deceased himself who was driving the ambassador car.

5.3 Vallabhbhai Jivabhai Rathod, the co-passenger in the ambassador car, stated on oath that when the deceased was driving the ambassador car from Ankleshwar to Surat, the witness of accompanying him in the car as a passenger and that about 12.30 in the night, when the car reached Amboli village, a truck was coming from the opposite direction followed by a luxury bus in question which was coming at an excessive speed. The luxury bus overtook the truck and in the process of overtaking the truck, the luxury bus came over the wrong side and collided with the ambassador car resulting into instantaneous death of the car driver. The witness also sustained serious injuries on his legs, face and chest and was admitted to a nearby hospital. Thereafter he was shifted to another hospital for more intensive treatment including stitches on the legs.

FIR Exh.26 was also lodged before the police by the driver of the truck at 2 o'clock in the morning on 23.11.1995. The truck driver also stated in the complaint that the luxury bus was following the truck and that in the process of overtaking the truck, the luxury bus collided with the ambassador

car with a very heavy impact.

The panchnama at Exh.27 also shows that the national highway no.8 from north to south had width of 22 feet east to west, since the car was proceeding from Ankleshwar to Surat, the eastern side of the road was the correct side for the car. Since the luxury bus was coming from the opposite direction, the western side of the road was the correct side for the luxury bus. The panchnama shows that the ambassador car was on the eastern side of the road i.e. on its correct side and that the luxury bus was also found on the eastern side of the road. As a matter of fact, the bus was lying to the east of the car.

In view of the above oral and documentary evidence on record, the Tribunal had no hesitation in holding that the accident was caused by the sole negligence of the luxury bus driver.

5.4 As per the unshaken evidence of eye-witness Vallabhbhai who was travelling as a passenger in the ambassador car being driven by the deceased, which is corroborated by the contents of the First Information Report lodged by the driver of the truck (Exh.26) which itself was not involved in the accident, the accident took place as the luxury bus was overtaking that particular truck and collided with the oncoming ambassador car being driven by the deceased. This version from the claimants' side on the question of

negligence is further fortified by the panchanama (Exh.27) which reveals that the ambassador car was lying on its correct side whereas the luxury bus was found in the middle of the road and much of the portion of the luxury bus was on the wrong half of the road. Moreover, the driver of the luxury bus not only fled from the scene of the accident, but also did not step into the witness box to give his version of the incident.

5.5 In the totality of the facts and circumstances of the case, therefore, we have no hesitation in confirming the finding of the Tribunal that the accident took place on account of sole negligence of the driver of the luxury bus, which was insured by the appellant-Insurance Company.

QUANTUM OF COMPENSATION

6. Coming to the question of quantum of compensation, Mr RH Mehta, learned counsel for the appellant Insurance Company has vehemently submitted that the Tribunal erred in assessing the monthly income of the deceased at Rs.13,000/- per month without any evidence and in spite of the fact that the deceased was not filing any income-tax returns. It is vehemently submitted that at the relevant time for the Assessment Year 1995-96 (previous year 1994-95), the income above RS.40,000/- per annum was taxable and even in absence of any such returns having been filed by the deceased, the Tribunal has

assessed the annual income of the deceased at Rs.13,000/- X 12 = Rs.1,56,000/-. It is submitted that apart from the fact that the tall claim of the claimants regarding income of the deceased was not borne out by any evidence, even otherwise, the Tribunal erred in not considering the illegality in the claim of the applicants for claiming compensation on the basis of alleged income which was never disclosed before the Income-tax authorities. It is submitted that by making an award on the basis of such undisclosed income, the Tribunal had paid premium to the tax dodgers and tax evaders.

7. On the other hand, Mr Arpit Kapadia with Ms Shaili Kapadia for the respondent-claimants has supported the judgment and award of the Tribunal. According to the learned counsel, the claimants had produced voluminous documentary evidence in the form of pay-in slips indicating deposits of large sums in the bank account of the deceased. It is submitted that the deceased was owner of two vehicles, one ambassador car and one jeep, and though loans were taken to purchase the said vehicles, the deceased had cleared the loans before the accident and, therefore, the deceased had substantial income from the business of plying these vehicles on hire, particularly because the vehicles were given on hire basis to ONGC and other institutions. Strong reliance is placed on the certificates of two taxi operators called M/s. MV Desai (certificate dated 2.3.1996) in respect of the jeep and Patel Travellers Company (certificate dated

1.12.1995) in respect of the ambassador car. It is submitted that the claimants had even taken the necessary steps for issuance of summons to the authors of the said certificates, but for some reason they could not come before the Tribunal.

As regards the business of flour mill, it is submitted that the electricity bill in the name of the grand-father of the deceased was produced and some other bills were also produced to show that purchase of construction materials in support of the claimants' case that the deceased was carrying on construction business also.

8. Having heard the learned counsel for the parties and having gone through the oral and documentary evidence on record, we are shocked to find that the Tribunal has assessed the monthly income of the deceased at Rs.13,000/- without giving any cogent reasons for arriving at such a finding. We are conscious that in such claim proceedings when a lowly paid self-employed person dies and his widow comes before the Tribunal, she would rarely be able to produce any documentary evidence to show that the deceased was earning Rs.2,000/- or Rs.3,000/- per month. However, when the widow or the other heirs of the deceased come forward with a claim for compensation of a large amount like Rs.25 lakhs or Rs.40 lakhs on the basis that the monthly income of the deceased was Rs.13,000/-, the Tribunal is duty bound to require the claimants to make good such

assertion on the strength of cogent and reliable documentary evidence.

9. Turning to the facts of the present case, it cannot be disputed that the deceased did own two vehicles being one jeep of 1990 model and one ambassador car of 1992 model. It would also not be unreasonable to accept the claimants case that these vehicles were given to other taxi operators or travel agents for being plied on hire. The taxi operator and travel agent who had issued the certificates in support of this assertion of the claimants, however, did not appear into the witness box. The moment they would have appeared into the witness box, they would have certainly been asked as to how much was being paid to the deceased for permitting operators to ply the two vehicles of the deceased. The said operators could also have been asked to produce their books of account because the two vehicles of the deceased were being regularly plied on hire by these two operators and for the purposes of organizations like ONGC. All that the certificates of these operators indicate is the rate at which the taxis were being given on hire i.e. Rs.3.5 per km. for a diesel taxi upto 2500 kms. a month and lower rate for additional mileage in a month. These are mere rates for allowing the jeep/car of the deceased to be plied on hire, but they do not indicate any margin of profit which the deceased was getting because apart from paying installments towards the purchase price of the vehicles, the deceased was also required to incur expenses not

merely for the maintenance of the vehicles but also for the fuel and salaries for the drivers being employed by the deceased. If the jeep was purchased in the year 1990 and was being plied on hire basis as claimed by the claimants prior to the accident on 23.11.1994, the deceased would have filed income-tax returns for the intervening three years because the alleged income of the deceased was much higher than Rs.40,000/- per annum. Even otherwise, there is nothing on record to show the exact or even approximate income of the deceased from the business of plying the two vehicles on hire.

10. So also the claimants' case that the deceased was also carrying on construction business is not borne out by any documentary evidence on record. To establish that he was involved in construction work, the claimants had produced some sundry receipts of purchases of cement etc., at Exh.43. These receipts at best show some sundry purchases of construction materials by the deceased. Majority of these purchases have been made in the month of March 1995 alone. The receipts pertained to small purchases of cement, bricks, etc.. These documents in no way establish that the deceased was involved in construction business. Even a person undertaking some repairs to his house would purchase cement, bricks and sand. That would not convert him into a businessman engaged in the construction industry.

11. The assertion of the claimants that the deceased was operating a Flour mill in the village is also not borne out from any reliance evidence on record. The electricity bills produced by the claimants for this purpose are in the name of the grand-father of the deceased. Some books of account could have been produced to show the income being generated from that business.

12. Considering all these aspects of the matter, we find no evidence on record to hold that in addition to renting the vehicles, the income of the deceased was augmented by other commercial activities. It is also not possible to believe that a person carrying on as many as three businesses would not maintain any books of account and that too when the alleged income of the deceased is in excess of Rs.1,50,000/- per annum as contended by the claimants as against the exemption limit of Rs.40,000/- under the Income-tax Act for the relevant period.

13. In view of the above highly unsatisfactory documentary evidence and oral evidence led by the claimants, it is shocking to find that the Tribunal assessed the income of the deceased at Rs.13,000/- per month even after noting that the deceased was not paying any income-tax. The Tribunal did not even care to pose the question – whether such alleged income could be taken into consideration when the deceased had not filed any income-tax returns.

Can the Claims Tribunal award compensation in utter disregard of the liability to file Income-tax returns?

14. At this stage, however, Mr Arpit Kapadia for the original claimants has invited our attention to the decision of the Allahabad High Court in **Oriental Insurance Co. Ltd. vs. Bhupender Kaur, 2004 ACJ 1130**, in support of the proposition that non-payment of income-tax cannot rule out the possibility of income of the deceased as claimed by his widow, as in default under the Income-tax Act would entail penal consequences but could not nullify altogether the effect of the statement of the widow that during the life time of the deceased, she was receiving an amount of Rs.10,000/- to Rs.12,000/- per month from the deceased.

15. In the first place, the said reported judgment does not indicate the income-tax exemption limit for the relevant period. Secondly, we may not be taken to have expressed the view that the income to be assessed in such case must of necessity be less than the exemption limit. When several tax saving schemes are permitted by the provisions of the Income-tax Act under which a person can plan to avoid paying any income-tax by availing of such exemptions and deductions. Sometimes, therefore, such income may be even between 150% or 200% of the basic exemption

limit, but the Tribunals or Courts assessing and computing the compensation in such cases cannot altogether ignore the relevant exemption limit while adjudicating the claim petitions otherwise it will amount to the Courts and Tribunals putting their seal of approval on the fiscal illegalities of the deceased. A Court of law cannot close its eyes to such illegalities and consider them as of no consequence. The Income-tax Act is as much enacted by the Parliament as the Motor Vehicles Act is. Even when the forum of Claims Tribunal is established under the Motor Vehicles Act, it cannot refuse to consider the provisions of the other statutes framed by Parliament or other competent Legislatures. The concept of Rule of law does not envisage that Tribunals or Courts established under one Act can with impunity condone the gross violations of other laws. Even though the highest Court of the land is vested with very wide and unlimited powers conferred by Article 142 of the Constitution for doing complete justice, it has now been held that the Apex Court also would not give any direction which would have the effect of violating a statutory provision.

Seen in this light, we express our inability to concur with the observations made by the Division Bench of the Allahabad High Court in Oriental Insurance Co. Ltd. vs. Bhupender Kaur, 2004 ACJ 1130. Even otherwise, we are of the view that the observations made by the Allahabad High Court were really obiter because (as paragraph 10 thereof would

indicate) the witness who had stated that the deceased did not pay any income-tax, was a person who was examined only as a witness of the accident and he had not and could not have any personal knowledge about the extent of income of the deceased from various sources as against the knowledge of the wife of the deceased.

16. In **Vishwa Mitra Chaddha vs. Amrit Kaur, 1972 ACJ 213** also, though the Allahabad High Court had apparently taken the same view, the Division Bench, confirming the view of the Tribunal that the monthly income of the deceased was Rs.500/- and dependency benefit was Rs.300/-, observed as under:-

> "A small business man having an average income just above the non-taxable limit may not have bothered to file a return or pay income-tax. The fact that he did not pay income-tax would not mean that really his income was less than the minimum exemption limit. In our opinion, the evidence indicates that the average monthly income of the deceased was Rs.500/- and we hold accordingly."

On the basis of the above assessment, the High Court determined the compensation at Rs.43,200/- and after deducting Rs.15,000/- as the value of the provisions which came to the claimants because of the death of the deceased, determined the final compensation at Rs.28,200/-. We are in respectful agreement with the above view, but for the reasons already indicated hereinabove, that even with income

above exemption limit a person may be in a position to avoid any liability to file any income-tax return by appropriate tax planning by availing of the various exemptions and deductions under the Income-tax Act. It is pertinent to note that in the facts of that case also, the Allahabad High Court assessed the income of the deceased at Rs.500/- per month.

17. Reliance is also placed on the decision of another learned Single Judge of the Delhi High Court in **Amarjit Kaur vs. Vanguard Insurance Co. Ltd., 1969 ACJ 286** in support of the proposition that merely because the deceased did not pay income-tax, it could not be held that his income was not above the taxable limit. In the facts of that case, the Tribunal assessed the income of the deceased at Rs.750/- per month i.e. Rs.9,000/- per annum and the loss of dependency benefit was assessed at Rs.300/- per month. The final compensation awarded was Rs.23,895/-. The broad observations relied upon by the learned counsel for the claimant in para 9 of the above judgment, “From the mere fact, however, that the deceased, Ajit Singh, did not pay income tax, it would not be possible to hold that his income was not above the taxable minimum.” have, therefore, to be read in the context of the facts in that case including the determination of the above amount as income and dependency benefit, the observations cannot, therefore, be pressed into service to support a claim on the basis of the income of the deceased at Rs.1,56,000/- per annum as against the exemption

limit upto Rs.40,000/- per annum.

18. In **Satpalsingh Dharamsingh Chowdhary vs. Ashok G Raut, 2005 ACJ 1900**, a learned Single Judge of the Bombay High Court was dealing with a case where the Tribunal discarded the oral evidence of the employer and also the income certificate issued by him on the ground that it was not supported by any pay-roll or any kind of account book and that no income-tax returns were filed. In the facts of that case, the learned Single Judge of the Bombay High Court held that there was no basis for discarding the oral evidence of the employer when he proved the income certificate that the deceased was earning Rs.8,000/- per month. Even otherwise, the Court did not in terms lay down any proposition of law that non-submission of income-tax return would be an irrelevant consideration while assessing the income of the deceased or for the purpose of testing the probative value of the evidence being led by the claimants to prove the income of the deceased.

19. Reliance placed on behalf of the claimants on the decision in **Sarla Dixit vs. Balwant Yadav, AIR 1996 SC 1274** is misconceived. In that case the Apex Court was merely explaining the rationale for deduction of one-third amount from the earnings of the deceased and observed that from the gross monthly income, at least one-third will have to be deducted by way of his personal expenses and liabilities like

payment of income-tax etc.. Such deduction would not mean that the deceased had filed any income-tax returns where as a matter of fact he had not.

Back to Quantum

20. Coming to the facts of the case, we find that vide Exhs.41 and 42 the claimants produced pay-in slips indicating deposits of different amounts at regular intervals. While three slips indicating deposit of larger amounts between 16,000 and 19,000 did not bear any stamp of the bank, the other receipts bearing the bank stamp show deposits of amount ranging between 7,000 and 10,000 / 12,000 every month. On a few occasions, the deposits have also gone upto Rs.14,700 or 14,900. Even, therefore, accepting the claimants' case that the deceased was receiving these amounts from the taxi operators/ travel agents for plying the two vehicles of the deceased on hire for institutions like ONGC, it would only mean that these were the gross monthly receipts. The deceased was required to incur several business expenses out of the said receipts, such expenses would be for fuel, maintenance and drivers' salaries as revenue expenses, over and above, payment of installments to the bank towards repayment of the loan for purchase price. Even if the loans were repaid before the accident, as contended by the claimants, the deceased would still be required to make provision for replacing the old vehicles because judicial notice can be taken of the fact that when the vehicles like ambassador car or jeep are plied

for hire in semi-rural areas like Bharuch district, the vehicles depreciate much faster. We are, therefore, of the view that even taking such average monthly deposit of Rs.12,000/- and maximum of Rs.14,000/- per month, even on most liberal estimate, the net income of the deceased from the business of giving vehicles on hire could not have been more than Rs.6,000/- to Rs.7,000/- per month.

21. We, therefore, assess the annual income of the deceased at Rs.80,000/- and proceed on the basis that with appropriate tax planning and with the benefits of depreciation, the deceased was in such a position that even though the exemption limit was Rs.40,000/- and his net income was Rs.80,000/- per annum, the deceased was not required to file the tax return.

22. Even thereafter proceeding on the basis that the deceased being a 34 year old young man engaged in the business of giving taxis on hire and had a flour mill of his grand-father, as contended by the claimants, utmost that can be done is to assess the potential future income of the deceased at Rs.1,20,000/- per annum. Deducting one-third therefrom as the personal expenses of the deceased and the other liabilities, the net dependency benefit for the family members would come to Rs.80,000/- per annum. The age of the deceased was 34 years. The Tribunal has adopted the multiplier of 16 years. Even though the multiplier appears to be slightly on the

higher side, even taking the most liberal view on this count also, we find that the Tribunal could not have computed the compensation for loss of dependency benefit at any amount higher than Rs.80,000 X 16 = Rs.12,80,000/-. Adding thereto, the conventional amounts of Rs.25,000/- for loss to the estate, Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses, the total compensation even on the most liberal estimate comes to Rs.13,25,000/-.

23. We find that the interest awarded by the Tribunal at the rate of 7.5% per annum, though not unreasonable, is required to be revised to 9% per annum in tune with the recent decision of the Apex Court in **Tejinder Singh Gujral vs. Inderjit Singh, 2007 (1) SCC 508**.

24. In view of the above discussion, we modify the award of the Tribunal and reduce the amount of compensation from Rs.25,21,000/- to Rs.13,25,000/- with proportionate costs and interest at the rate of 9% per annum. Accordingly, respondent Nos.1 to 4 herein- original claimants are entitled to receive total compensation of Rs.13,25,000/- with proportionate costs and interest at the rate of 9% per annum from the date of the claim petition till the date of deposit.

25. In view of the above findings, the cross objections filed by the claimants are required to be dismissed and are hereby dismissed.

26. Since the appellant-Insurance Company had deposited the compensation amount awarded by the Tribunal with proportionate costs and interest aggregating to Rs.42,66,022/-, the excess amount deposited by the Insurance Company, in light of the computations indicated in this judgment, shall be refunded to the Insurance Company from out of the amounts invested in fixed deposits with a nationalized bank. We are informed that such investments are to the tune of Rs.29,80,880/-. The Tribunal shall accordingly compute the excess amount and refund the same to the Insurance Company within one month from the date of receipt of the writ of this Court.

27. Before parting with the matter, we cannot help observing that in spite of several decisions of the Apex Court viz. Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274 and TN State Transport Corporation Ltd. vs. S Rajapriya, (2005) 6 SCC 236, the Tribunal provided for disbursement of 30% of the award amount , which has meant disbursement of Rs.12,77,642/-. The Tribunal has not given any reason whatsoever in the judgment under appeal, as to why such large amount was required to be disbursed to the claimants who on the date of the judgment, are widow aged 41 years, two minor children and widowed mother of the deceased who died at the young age of 34 years. Time and again, this Court as well as the Apex Court have sounded a note of caution for appropriate

directions for investment of such amounts so that the substantial amounts which would be the only source of income and maintenance for the bereaved family and particularly the widow, the widowed mother and minor children, do not get frittered away and remain available for the claimants themselves. In the peculiar facts and circumstances of the case, including the fact that the award under challenge in the appeal was for an excessive amount and the award was not made on the basis of cogent and reliable documentary evidence, we are of the view that in the interests of justice and the claimants themselves, it would be necessary to call upon the claimants to show how they have dealt with this amount of Rs.12,77,642/- disbursed to them by the Tribunal by cheques dated 8.1.2007.

28. Accordingly, while disposing of the appeal in the aforesaid terms, we call upon the claimants to appear before us on **23rd March 2007**. In view of the inability pleaded by Mr Arpit Kapadia to intimate the claimants, we direct that the notice shall be served upon the claimants through a special messenger forthwith and appropriate intimation shall be sent to the District Judge, Baroda for immediate service of notice on respondent Nos.1, 2 and 3 and to District Judge, Bharuch for immediate service of notice on respondent No.4. All the four respondents shall remain personally present before us on **23rd March 2007.**

29. The appeal is accordingly allowed in the aforesaid terms.

Since the appeal is disposed of, the civil application for stay also stands disposed of.

30. At this stage, Mr Kapadia for the respondent-claimants prays for stay of operation of this judgment as the claimants are desirous of having further recourse in accordance with law.

31. The directions contained in paras 24 and 26 hereinabove are to operate within one month from the date of receipt of the writ by the Tribunal. Since the preparation of the writ will take some time, we direct that the Tribunal shall not actually refund the amount to the Insurance Company till 30th March 2007, though it will be very much open to the Tribunal to accept from any of the parties, the computations of the amount payable under this judgment.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

zgs/-